

12/04 (AO243)

08CV1241

JUDGE COAR

MAG.JUDGE MASON

FEB 29 2008 aew

2-29-2008

MICHAEL W DOBBINS

CLERK, U.S. DISTRICT COURT

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Northern District of Illinois
Name (under which you were convicted): RODNEY C. BEW	Docket or Case No.: 04:253-1
Place of Confinement: U.S.P. Atlanta/P.O. Box 150160/Atlanta, Ga.	Prisoner No.: 16835-424
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) RODNEY C. BEW

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the Northern District of Illinois, Eastern Division / Everett McKinley Dirksen Building / 219 South Dearborn Street / Chicago, Illinois 60604

(b) Criminal docket or case number (if you know): 04:253-1

2. (a) Date of the judgment of conviction (if you know): October 18, 2005

(b) Date of sentencing: June 2, 2006

3. Length of sentence: 216 months

4. Nature of crime (all counts): 22 Count Indictment for Conspiracy to Distribute & PWITD cocaine powder, cocaine base 'crack'; 18 U.S.C. §922(g) Possession of a firearm, and Use of a Telephone for Conspiracy & PWITD Cocaine powder, and cocaine base 'crack'.

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only N/A

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: _____ N/A

(b) Docket or case number (if you know): _____ N/A

(c) Result: _____ N/A

(d) Date of result (if you know): _____ N/A

(e) Citation to the case (if you know): _____ N/A

(f) Grounds raised: _____ N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____ N/A

(2) Result: _____ N/A

(3) Date of result (if you know): _____ N/A

(4) Citation to the case (if you know): _____ N/A

(5) Grounds raised: _____ N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____ N/A

(2) Docket or case number (if you know): _____ N/A

(3) Date of filing (if you know): _____ N/A

(4) Nature of the proceeding: _____ N/A

(5) Grounds raised: _____ N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No N/A

(7) Result: _____ N/A

(8) Date of result (if you know): _____ N/A

(b) If you filed any second motion, petition, or application, give the same information: NO

(1) Name of court: _____ N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): _____ N/A

(4) Nature of the proceeding: _____ N/A

(5) Grounds raised: _____ N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No N/A

(7) Result: _____ N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

(1) First petition: Yes No N/A

(2) Second petition: Yes No N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Defense counsel's not informing defendant, and defendant's lack of legal knowledge.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1] Problem with Motion for Discovery concerning Brady Proffer Material.
- 2] Counsel's lack of any investigatory actions regarding anything case-related.
- 3] Counsel's lack of motivation and ability to effectively negotiate a plea agreement and then to argue its' conditions.
- 4] Counsel failed to object to incorrect information on defendant's Presentence Investigation Report.
- 5] No attempt to offer any mitigating factors at sentencing.
- 6] Counsel's failure to argue defendant's past criminal history.
- 7] Counsel's failure to explain to defendant 'relevant conduct'.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal-No legal assistance/guidance-No defendant knowledge-Denied access due to transit status.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): _____ N/A
 Date of the court's decision: _____ N/A
 Result (attach a copy of the court's opinion or order, if available): _____
 N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____ N/A

Date of the court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Defense counsel's negligence and defendant's lack of legal knowledge.

GROUND TWO: TITLE 18 IS IN VIOLATION OF U.S. CONSTITUTION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1] Congressional actions concerning Title 18 conducted while Congress was adjourned.
- 2] Congressional voting on Title 18 was in violation of U.S. Constitution.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal

No legal assistance/guidance-No defendant knowledge-Denied access due to transit status.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____ N/A

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____ N/A

Date of the court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____ N/A

Date of the court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Defense counsel's negligence and defendant's lack of legal knowledge.

GROUND THREE: SENTENCING ENHANCEMENTS IN VIOLATION OF GUIDELINES STATUTES

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- 1] Past Criminal History points were not accurate.
- 2] Sentencing enhancements violate 'Booker' rule.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal-No legal assistance/guidance-No defendant knowledge-Denied access due to transit status.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____ N/A

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____ N/A

Date of the court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____ N/A

Date of the court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Defense counsel's negligence and defendant's lack of

legal knowledge.

GROUND FOUR: SENTENCING REDUCTION PURSUANT TO AMENDMENT 706

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

11. Recent Sentencing Commission's sentence reduction for cocaine base 'crack'.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal—
No legal assistance/guidance—No defendant knowledge—Denied access due
to transit status.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Defense counsel's not informing defendant, and defendant's lack of legal knowledge.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ~~ONE~~ Evidence supporting the 'leadership role' insufficient to FIVE: finding and sentencing enhancement.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Leadership role was not sufficiently evidenced beyond judicial belief.

Leadership role was not part of plea agreement, thus the enhancement was not constitutionally legal.

Prosecution never filed notice to enhance prior to plea agreement.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: No Direct Appeal-

No legal assistance/guidance-No defendant knowledge-Denied access due to transit status.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Defense counsel's negligence and defendant's lack of legal knowledge.

13. Is there any ground in this motion that you have not previously presented in some federal court? Yes
If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Grounds 1, 2, 3, 4 and 5.
Lack of counsel effectiveness and defendant's lack of legal knowledge.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Standish Willis Chicago, Illinois

(b) At arraignment and plea: Gareth Morris 1704 N. Dayton St. Suite 100
Chicago, Illinois 60614

(c) At trial: N/A

(d) At sentencing: Gareth G. Morris 1704 N. Dayton St. Suite 100
Chicago, Illinois 60614

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* Because defendant was denied access to his legal case materials to effectuate his 28 U.S.C. §2255 motion due to an uninterrupted transit status by the Federal Bureau of Prisons, the Statute of Limitations must be tolled. Defendant did contact this court concerning the B.O.P. transfer status to preserve his appeal rights.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: _____

Resentencing to the proper lower range within the correct guidelines. _____

or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on February
21, 2008 (month, date, year).

Executed (signed) on 2-21-2008 *Rodney C. Bem* (date).

Rodney Curtis Bem

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

N/A

IN FORMA PAUPERIS DECLARATION

Northern District of Illinois

[Insert appropriate court]
